

**COMMONWEALTH OF MASSACHUSETTS**

**DEPARTMENT OF  
INDUSTRIAL ACCIDENTS**

**BOARD NO. 073619-88**

Kimberly Mahoney  
City of Boston Police Department  
City of Boston

Employee  
Employer  
Self-insurer

**REVIEWING BOARD DECISION**  
(Judges Levine, McCarthy and Carroll)

**APPEARANCES**

Arthur J. Lewis, Jr., Esq., for the employee  
John T. Walsh, Esq., for the self-insurer at hearing  
Susan M. Saucier, Esq., for the self-insurer on appeal

**LEVINE, J.** The self-insurer appeals from a decision in which an administrative judge awarded the employee ongoing partial incapacity benefits, despite the opinion of the impartial medical examiner that the employee had recovered from the accepted 1988 industrial injury. We reverse the decision.

In 1988, the employee injured her back, neck and arm when she fell off a chair at work. The self-insurer accepted the injury, and the employee was out of work for most of the time period between 1988 and August 1991. In August 1991, she returned to work, and over the years she took anti-inflammatory medication for pain relief. In April 2000 the employee left work due to more constant and severe back pain. (Dec. 3, 4-5.)

The employee filed a claim for § 34 benefits. A conference order awarded those benefits. The self-insurer appealed to a de novo hearing. The employee underwent an impartial medical examination. (Dec. 2.) The impartial physician's opinion was that the employee had mild degenerative disc disease, which pre-dated her 1988 work injury. The doctor found no objective positive findings indicating significant pathology in the lumbar spine or any radiculopathy. The doctor made several findings of inconsistency suggestive of symptom magnification. The impartial physician opined that the employee had recovered from her 1988 lumbar strain, and that she should be able to carry on her

usual occupational activities without any permanent partial impairment of function. (Dec. 6-7; Impartial Report; Dep. 28-29.) The impartial physician did not causally relate whatever impairment the employee exhibited, if any, to the work injury which occurred twelve years earlier.

Despite the opinion of the impartial physician, the judge found the employee partially incapacitated and awarded benefits. He did so, it appears, based on his crediting the employee's complaints of pain. (Dec. 7-8.) It was, however, error for the judge to do so. This is not a case for the application of the principle that a judge may *augment* a medical opinion of partial disability with the judge's own credibility findings as to the employee's pain exhibited at hearing, to support an award of total incapacity. See Cugini v. Town of Braintree School Dep't, 17 Mass. Workers' Comp. Rep. 363, 366-367 (2003); Capozzi v. Allen Davis d/b/a Brockton Auto Repair, 17 Mass. Workers' Comp. Rep. 119, 123 (2003); Reynolds v. Kay Bee Toys, 16 Mass. Workers' Comp. Rep. 433, 438 (2002); Delaney v. Laidlaw Waste Sys., 13 Mass. Workers' Comp. Rep. 72, 74 (1999); Anderson v. Anderson Motor Lines, 4 Mass. Workers' Comp. Rep. 65 (1990). In the present case, the exclusive prima facie evidence of the impartial physician established that the employee had recovered from her lumbar strain and that she could return to her former work duties without any limitations related to the 1998 industrial injury. (Impartial Report, 3.) As a result, there was no causally related medical disability to which the judge could have applied his credibility findings on the employee's pain. See Taylor v. USF Logistics, Inc., 17 Mass. Workers' Comp. Rep. 182, 185 (2003)(judge cannot substitute his own lay opinion on pain for that of § 11A physician finding no medical disability, where doctor is working with same facts as judge); Blair v. Olympus Healthcare, 17 Mass. Workers' Comp. Rep. 37, 41 (2003)(where the medical evidence is inadequate to satisfy the requisite causation standard, the employee cannot prevail). That lack of supporting medical evidence mandates that the decision awarding partial incapacity benefits cannot stand. Accordingly, the decision is reversed.

So ordered.

**Kimberly Mahoney**  
**Board No. 073619-88**

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Frederick E. Levine  
Administrative Law Judge

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William A. McCarthy  
Administrative Law Judge

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Martine Carroll  
Administrative Law Judge

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